

# Legislative/Judicial Deference versus NGOs/Citizens Activism: Taiwan's Successful Fight Against Covid-19

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As early as 31 December 2019, when the world was barely aware of Covid-19 as a deadly new coronavirus disease, [Taiwan's Centers for Disease Control \(CDC\)](#) already imposed onboard inspections of all direct flights arriving from China's metropolitan city of Wuhan. On 15 January 2020, the CDC declared Covid-19 as a Category 5 disease under the [Communicable Disease Control Act \(CDC Act\)](#). On 20 January 2020, the [Central Epidemic Command Center \(Central Command or CECC\)](#) was created, pursuant to the CDC Act, to coordinate inter-agency efforts and provide for regulatory measures. The CECC has since been led by Health and Welfare Minister Shih-Chung Chen with daily briefings and QA sessions for more than a year up till now.

Taiwan's first Covid-19 case was confirmed on 21 January 2020. A year after that case, as of 21 January 2021, there were only 837 confirmed cases (including 66 local cases) and 7 death. By 4 April 2021, there were [1,047 confirmed cases](#), the majority of which were imported cases, and 10 death. Except for [a minor hospital cluster infection in late January 2021](#), there has been no sign of community spreading. Compared to what has been going on globally with three million death, Taiwan's control of Covid-19 pandemic is a miraculous success, particularly given its barred access to the World Health Organization and its geographic proximity and economic close ties with China.

Notably, this success has been achieved without issuance of any emergency order for lockdowns, shelter in place, business closure, or school suspension. People's daily lives have been kept without substantial interruption. Because of this, Taiwan's legal and regulatory responses with the Covid-19 pandemic was praised as [the least restrictive in the world](#). More importantly, scheduled elections were held accordingly, court hearings continued in-person, and government services delivered without compromise. All of these have led to [a 3% growth of GDP](#) in 2020, the best in Taiwan's recent years and [the best among advanced economies](#).

## Legislative Response: Broad Delegation to the CECC with an Increased Level of Congressional Oversight

Like all other laws involving technology governance, the CDC Act is filled with broad delegations to the Ministry and experts. [One such provision, however, was challenged before the Constitutional Court after the 2003 SARS outbreak](#). While

upholding the constitutionality of the government's broad power, the Constitutional Court nevertheless instructed the legislature to provide further details, time limit, and compensation for the restrictions. Accordingly, the CDC Act underwent significant revisions, paving the way for the government's legal and regulatory capacity in combating serious transmittable diseases including bird flu, zika virus, swine flu, and this time, Covid-19.

Aside from the CDC Act, [the Special Act for Prevention, Relief, and Revitalization Measures for Severe Pneumonia with Novel Pathogens](#) (Special Covid-19 Act) was enacted on 25 February 2020. Most provisions are made to enable the government expenditure for relief, compensation, and economic stimulus. A budget of TWD 60 billion is authorized, and a limited period of the Special Covid-19 Act is stipulated from 15 January 2020 to 30 June 2021.

Two provisions of the Special Covid-19 Act, however, have caused serious concerns. The first is Article 7, which grants the Central Command the power to implement necessary measures for pandemic control. Unlike other provisions in the CDC Act, this provision grants an expansive power subject only to necessity. Wary of criticism, the Central Command has seldom referred to this provision except for [a travel ban issued to medical personnel](#). The other controversial provision is Article 8, in which the Central Command is given the power to release personal data if an individual violates quarantine or isolation order. This is an exception to Articles 10 and 11 of the CDC Act, under which those having access to personal data are banned from disclosure. Facing mounting pressures from human rights groups, a clause was eventually added, requiring [deletion of personal data at the end of pandemic according to the Personal Data Protection Act](#).

To increase the level of congressional oversight, [Article 18 of the Special Covid-19 Act](#) requires the government issue a written report three months after promulgation and the premier report to the legislature in person about the pandemic situation and special budget expenditure after six months. It also requires [a dedicated government website](#) for updating information on relevant laws, regulations, or government orders. Accordingly, [in April and September 2020 respectively](#), Premier Tseng-Chang Su reported to the legislature for the Covid-19 special budget and updates, and [on 26 February 2021](#), he again delivered a most recent report including the progress of vaccination before the legislature. On 24 March 2021, initiated by the opposition party, the legislature passed a resolution to authorize [the forming of an inspection committee to acquire all relevant documents concerning vaccination procurement](#).

## **Judicial Deference to Regulatory Restrictions to Human Rights and Civil Liberties**

The successful control of pandemic has led to the preservation of individual freedoms and civil liberties. Although people in Taiwan must wear face masks when social distancing cannot be maintained and accept fever checks when using public transportation or entering into buildings, they have been able to pack onto subways

and mob busy ball games and music concerts, leading their normal lives as in the pre-Covid-19 time.

Still, regulatory measures for pandemic control including inspection, contact-tracing, quarantine, inbound and outbound travel restrictions have caused human rights concerns. Of particular note is the strict imposition of 14-day quarantine on those suspicious of infection or on those –national or non-nationals alike– entering into Taiwan from the countries listed on the Travel Notice. Non-compliance of quarantine orders are imposed with civil penalties. Those under quarantine orders are required to regularly report their health status to the local health authority. In addition, the CECC also launched a digital system of “[electronic fence](#)” in March 2020 and a further revised version of “[electronic fence 2.0](#)” to monitor compliances of quarantine orders. Although compensation is provided for quarantined individuals whose economic conditions are met, 14-day quarantine orders are undoubtedly a substantial restriction of personal freedom guaranteed by [Article 8 of the Constitution](#), a core fundamental right whose protection has been extended to non-nationals by the Constitutional Court in [JY Interpretation No 708](#). The use of digital technology in monitoring compliance also raises concerns with privacy and personal data protection.

There have been a few judicial challenges to these quarantine orders or imposition of civil penalties. None of these challenges, however, succeeded in courts. For example, a very first *habeas corpus* challenge was brought in August 2020, by an individual returning from Hong Kong, arguing that the quarantine order was illegal as it was not imposed in compliance with the due process guaranteed by [Article 8 of the Constitution](#) and [the Habeas Corpus Act](#). The challenge was dismissed by the district court, and [the dismissal was sustained by the Taiwan High Court](#). Another *habeas corpus* challenge was brought in December 2020 by an individual who was confirmed with Covid-19 infection and quarantined in a hospital, arguing that the requirement of consecutive negative RT-PCR tests for releasing from hospitals was too stringent and hence the resulting extension of quarantine for more than thirty days was unnecessary and illegal. Again, [the challenge was not accepted by the court](#). Most other challenges were made to civil penalties imposed for violating quarantine orders, and none of them succeeded.

A few other judicial challenges were brought by detained foreign nationals pending deportation. By the Constitutional Court decision in [JY Interpretation No 708](#), a foreign national who is facing deportation and being temporarily detained is given a right to seek judicial redress. In May 2020, a migrant worker pending deportation to Vietnam challenged his temporary detention order that had been extended due to the Covid-19 pandemic. He argued for release from the detention center pending his deportation as the crowded situation in the detention center would have seriously increased his risk of infection. Having balanced all relevant factors including the detention center’s hygienic measures, [the court denied the request](#). [Other similar requests were also rejected](#).

Also noteworthy are criminal sanctions for combating pandemic misinformation. Both [Article 14 of the Special Covid-19 Act](#) and [Article 63 of the CDC Act](#) impose criminal penalties, up to TWD 3 million, on those who disseminate rumors or incorrect

information concerning epidemic conditions or communicable diseases, resulting in damages to the public or others. There have been quite a number of cases regarding pandemic misinformation, and expectedly, judicial deference to such criminal prosecutions is also generously provided.

## **NGOs and Citizens Activism in Safeguarding Human Rights and Civil Liberties Amidst the Pandemic**

In contrast with judicial deference, human rights NGOs and citizens have been quite active in voicing concerns or disagreements with legislative or regulatory measures for pandemic control. As previously mentioned, human rights NGOs were the first to oppose the passage of [the Special Covid-19 Act](#) due to the expansive delegation of power. They also strongly opposed the launch of “[electronic fence](#)” because of potential privacy violations. It was due to their persistence, the deletion of relevant personal data and the security of data transmission were promised and eventually written into [the law](#). Even front-line healthcare workers, while collaborating with the government, have been very attentive to their own rights and work safety.

One most recent example was when the CECC required all inbound passengers including nationals provide an RT-PCR test report before arriving airports in Taiwan, NGOs and human rights lawyers –citing one’s fundamental right to return home– successfully pushed the CECC [to make changes overnight, for human rights accommodations](#).

Aside from being the opposition, Taiwan’s civil groups and local communities have also played as crucial partners for pandemic control. They voluntarily participated in the network of disease control and medical resource distribution and educated for the general public to wash hands, check temperatures, wear face masks, and exercise precautions in public and private gatherings. This strategy sees civil society and local communities as collaborative partners in combating Covid-19, helping to shape a sense of community in launching collective efforts.

It is clear that Taiwan’s vibrant civil society and local communities have been a crucial counterbalance to government power, weakening the tendency of power concentration that has been seen in other countries where democratic backsliding or authoritarian governance is revived in the name of pandemic control.

## **A Cure to *Pandemocracy*: Transparent and Responsive Political Process with Vibrant Civic Society**

The Covid-19 pandemic has turned the world upside down; effective legal and regulatory responses require innovations. In Taiwan, the key to prevent tyranny in pandemic control is a transparent and responsive political process in which citizen activism is a crucial part.

Notwithstanding its broad legislative delegation and judicial deference to regulatory restrictions, the CECC is keenly aware of the importance of maintaining public trust and shouldering democratic accountability during the pandemic. The CECC has made its decision-making process transparent, evidence-based, and open to public scrutiny through reports and responses. Taiwan's experience suggests a new model of democratic legitimacy for pandemic governance. While broad legislative delegation and judicial deference may undermine constitutional checks and balances and risk human rights violations, NGOs and citizens activism may form a key counterbalancing power and provide a cure for *pandemocracy*.

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